IN THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

CLEM ABRAMS, et al., Plaintiffs and Petitioners, v. THE CITY OF SAN DIEGO, etc. Defendants and Respondents.	) No. 655468) FINAL JUDGMENT GRANTING PETITION FOR WRIT OF MANDATE
MESA SHOPPING CENTER EAST, a Business Entity, Real Party in Interest.	) Date: March 21, 1997) Time: 8:45 a.m.) Dept.: 48) Trial: Not set

This matter came on for hearing on March 21, 1997, in Department 48, the Honorable Wayne L. Peterson, Judge Presiding. John L. Mullen, Deputy City Attorney, appeared for respondent City of San Diego; Asaro, Keagy, Freeland & McKinley, by Steven A. McKinley, appeared for real party in interest, Mira Mesa Shopping Center; there was no appearance for petitioner.

The court having read the briefs, reviewed the administrative record, and considered the arguments of counsel, hereby finds and determines as follows:

1. There is no relevant evidence in the record of benefits to the parcel that a reasonable mind might accept as adequate to support the conclusion that there was roughly proportionate benefit to the parcel;

2. That the test of *Doland v. City of Tigard*, 512 US 374 (1994) and *Nollan v. California Coastal Commission*, 483 US 825 (1987) applies, because Petitioners will not be required to pay the exaction (in the form of a lien) unless

Petitioners seek a building development permit for over $20,000.00 or record a final map by February 13, 2010. Hence, the local government has imposed a special discretionary permit conditioned on development by an individual property owner, not on a broad class of property owners in the form of a generally applicable assessment, requiring scrutiny under the heightened standard.

3. Petitioner has not disputed that the ninety-day statute of limitations under CCP 1094.6 has run as to costs assessed under the Cost Reimbursement District prior to June 23, 1992, in the amount of $998,299.00.

WHEREFORE, good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

That a preemptory writ of mandate shall issue under the seal of this court commanding respondent, the City of San Diego, including all of its agencies, departments, subdivisions, officers, employees, and agents, within the time specified for a return to the writ to demonstrate a factually sustainable proportionality between the effects of the increased costs of $545,251.18 assessed through the Cost Reimbursement District on June 23, 1992, and the exaction.

IT IS SO ORDERED

Dated: 6/30/97

/s/ Peterson
JUDGE OF THE
SUPERIOR COURT
WAYNE L. PETERSON